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HUMAN RIGHTS COMMITTEE

Fifty-second session

SUMMARY RECORD OF THE 1377th MEETING

Held at the Palais des Nations, Geneva,
on Friday, 28 October 1994, at 3 p.m.

Chairman: Mr. ANDO

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GE.94-19742 (E)

The meeting was called to order at 3.10 p.m.

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 40 OF THE COVENANT (agenda item 4) (continued)

Second periodic report of the Libyan Arab Jamahiriya (CCPR/C/28/Add.16) (continued)

1. At the invitation of the Chairman, Mr. Hafyana, Mr. El Zahrah, Mr. Al Jnuli, Mrs. Markhus, Mr. Abuzenen and Mrs. El Hajjaji resumed their places at the Committee table.

2. The CHAIRMAN invited the Libyan delegation to continue its replies to questions related to section II of the list of issues.

3. Mr. HAFYANA (Libyan Arab Jamahiriya) said that, at the previous meeting, Mr. Aguilar Urbina had noted that in the Libyan Arab Jamahiriya heresy was punishable by death in the same way as unjustified murder. However, the meaning of the term "heretic" needed to be clarified. It did not refer to persons practising religions other than Islam, whose beliefs and rites were not only respected but also protected in the Libyan Arab Jamahiriya, but to Muslims who repudiated their faith; Shariah law was very specific on the point. As yet, no such cases had occurred in Libya, and the death penalty had never been imposed for such a reason. The great majority of those living in Libya were Muslim; however, small communities of other religions also existed, generally foreigners working in the country. Such communities were free to observe their religion without let or hindrance and to establish schools where their children could be taught their own culture through their own language.

4. Mr. Bán had asked a question about a Hungarian woman who had suffered a beating in the Libyan Arab Jamahiriya. Under the Shariah, flogging was the punishment meted out to a woman taken in adultery, but such punishment was imposed only on those of the Islamic faith. It would not apply to a Hungarian, who was presumably a Christian. A beating given in the course of questioning or after being charged of an offence would constitute a violation of the Convention against Torture.

5. With regard to details concerning prisoners, which Mr. Wennergren had requested, he undertook to make every effort to seek replies to all questions.

6. Mrs. CHANET asked whether a person who refused to adhere to any religion was considered a heretic in Libya.

7. Mr. HAFAYANA (Libyan Arab Jamahiriya) said that only an apostate from Islam was regarded as a heretic. There were no legal sanctions against persons who followed other religions or were atheists.

8. Mr. WENNERGREN said he had not merely requested details of prisoners. His principal question had been whether incommunicado detention without charge or trial was a routine practice in the Libyan Arab Jamahiriya, as had been alleged by many sources.

9. Mr. HAFAYANA (Libyan Arab Jamahiriya) said he had no information about the form of detention mentioned. His delegation did not always have all the first-hand details available to answer each of the very wide range of questions asked orally, but he reiterated his undertaking that every effort would be made to find those answers for the Committee. Information provided by outside sources was not always very reliable; such reports often made errors even in easily verifiable facts such as the correct military rank of the Head of State.

10. The CHAIRMAN said he hoped that in the case of questions to which an immediate reply was not feasible the Committee would receive answers from the State party in writing as soon as possible. He then invited the Libyan delegation to respond to the questions in sections III and IV of the list of issues, which read:

"III. Right to a fair trial (article 14)

(a) What guarantees are there for the independence and impartiality of the judiciary?

(b) Please provide information on the legal and administrative provisions governing tenure, dismissal and disciplining of members of the judiciary.

(c) Please provide information concerning the organization and functioning of the Bar in the Libyan Arab Jamahiriya.

(d) Please provide detailed information on the operation of the legal aid system (see para. 36 of the report).

IV. Non-discrimination, equality of the sexes, freedom of religion expression, assembly and association, political rights and persons belonging to minorities (articles 2 (1), 3, 26, 18, 19, 20, 21, 22, 25 and 27)

(a) Please provide information on laws as well as the relevant practices giving effect to the provisions of articles 2 (1) and 26 of the Covenant. Have there been any cases of discrimination against non-Muslim believers and, if so, what measures have been taken to prevent the recurrence of such acts and to provide remedies to the victims?

(b) What are the practical consequences of article 2 of the Constitution proclaiming Islam the religion of the State? How is reconciliation achieved with article 18 of the Covenant and the Committee's General Comment No. 22 (48)?

(c) Please provide further information, including relevant statistical data, concerning the participation of women in the political and economic life of the country.

(d) What are the legal and practical effects of the condemnation of 'monopolization and exploitation of religion to stir up sedition,

fanaticism, sectarianism, factionalism and conflict' by the Jamahiri society (see para. 43 of the report)?

(e) Please provide information on the law and practice relating to the employment of minors.

(f) Please provide information concerning the law and practice relating to permissible interference with the right to privacy.

(g) What controls are exercised on the freedom of the press and mass media in accordance with the law?

(h) What are the restrictions on the exercise of the freedom of expression as guaranteed by article 19 of the Covenant?

(i) Please elaborate on the provisions of the law referred to in paragraph 45 of the report in relation with article 20 of the Covenant.

(j) Please provide information on the law and practice concerning public meetings.

(k) Please provide information on the existence and functioning of associations and trade unions in the Libyan Arab Jamahiriya.

(l) Please clarify the statement in para. 56 of the report that there are no ethnic minorities in the Libyan Arab Jamahiriya. What measures have been taken to guarantee the rights of persons belonging to religious or linguistic minorities under article 27 of the Covenant?"

11. Mr. EL ZAHRAH (Libyan Arab Jamahiriya), responding to questions III (a) and (b), said proper safeguards for the independence and impartiality of the judiciary were provided in Libyan law by a special Act which defined all the conditions relating to the judiciary. Any person appointed to the judiciary must have a diploma in legal studies, present a certificate of good conduct, and have committed no moral offence or been found guilty of any crime. A thorough knowledge of the functions and attributes of the judiciary was also necessary. In their acts judges were accountable to a Higher Council consisting of the Secretary of Justice and the Presidents of the High Court, the Courts of Appeal and the Department of Investigation. Other safeguards of impartiality were that the salaries of judges were kept distinct from those of other officials and that only the Higher Council could initiate an inquiry about a judge or take proceedings against him. Any prison sentence handed down against a judge was served in a special place of detention, not in the ordinary prisons. Judges could not be arbitrarily transferred from one place to another, nor could they be asked to undertake tasks contrary to their high calling. The Department of Investigation undertook any inquiry into the work of the judiciary and followed up any complaints made against it. Judges were expected to be fully cognizant of their duties and the cases before them. Judges were paid salaries adequate for their own and their families' support; suitable housing and other facilities were provided by the State during their period of service. A member of the judiciary was free to tender his resignation at any time of his own choosing, effective from the date of submission.

12. In response to question III (c), he said there were three aspects to the practice of the legal profession in the Libyan Arab Jamahiriya. The private practice of the law was regulated by an Act of 1990. In addition, the services of people's lawyers, who were public officials, were provided by the State to all those requiring them. Lastly, the Attorney-General was responsible for the supervision of all cases. A Bar Association brought together the members of the legal profession and guaranteed their independence. It was dedicated to promoting the profession and strengthening justice in accordance with the law. Through conferences and other methods, it promoted further study of the law.

13. Legal aid, the subject of question III (d), was provided by the State free of charge, irrespective of the nature of the case, to all those who would otherwise be unable to afford legal services. Such aid included travel and subsistence costs. If the court decision were to be published, the cost was met by the Government.

14. In response to question IV (a), he said that all Libyan citizens, both men and women, were equal before the law without discrimination of any kind. That was guaranteed by article 1 of the Promotion of Freedom Act No. 20 of 1991, by article 5 (2) of the Constitutional Declaration and by the Great Green Document on Human Rights. Article 5 of the Promotion of Freedom Act prohibited the monopolization of religion to serve purposes that were not religious in nature. Libyan legislation was thus fully compatible with articles 2 (1) and 26 of the Covenant.

15. An answer to question IV (b) had already been given by Mr. Hafyana. The Constitution proclaimed Islam the religion of the State. The authorities thus had no power to introduce legislation incompatible with the principles of Islam. There was no compulsion on non-Muslims to become Muslim; that principle was enshrined in the Qur'an. However, Muslims were subject to Shariah law in all areas. A Muslim who changed his religion was liable to legal proceedings, since such an act was contrary to the Shariah.

16. In response to question IV (c), he stated that no distinction was made between men and women as far as participation in the political and economic life of the country was concerned. The principle of equal pay for equal work was laid down in the Framework Act of 1981. Acquiring an education was considered the duty of all citizens, irrespective of sex; primary education was compulsory and free of charge. Women had equal access to all occupations and professions, in many of which they had already achieved high positions, and an equal duty to participate in national defence.

17. With regard to question IV (d), Libyans were prohibited from making use of religion to promote divisions in society or stir up fanaticism or sectarianism. Article 289 of the Penal Code provided a one-year prison sentence and a fine as punishment for any such act. Article 191 of the same Code provided a similar penalty for any attack on or disruption of the practice of any religion. Libyan law required respect for all religions and made it punishable to publish any distortion or misinterpretation of the holy texts of any religion.

18. With regard to question IV (e), article 92 of the Labour Act, as amended, and decrees promulgated by the Ministry of Social Affairs prohibited the employment of young persons under the age of 15 - the age of a minor for employment purposes was that appearing on the official birth certificate - unless certain strict conditions were complied with it was unlawful for minors under the age of 15 to work for more than six hours a day or to remain at a workplace throughout the day; work had to be followed by a period of rest; article 94 of the Labour Act prohibited the employment of minors between the hours of 8 p.m. and 7 a.m., on overtime, or at weekends or on public holidays; under the Labour Act, it was incumbent on an employer to post at the workplace a notice setting out the regulations governing the employment of minors and specifying their hours of work and rest, and to compile a list of all minors working for him with date of birth and length of service.

19. With regard to question IV (f), Libyan law prohibited interference with the right to privacy except in the specific circumstances laid down in article 16 of the Promotion of Freedom Act No. 20 of 1991 (cf. CCPR/C/28/Add.16, para. 61). Inviolability of the home was guaranteed by article 19 of the same Act (ibid.), and confidentiality of correspondence by its article 15 (ibid.). Article 12 of the Constitutional Declaration further provided that homes were inviolable and should not be entered or searched except under the circumstances and conditions defined by the law. The right to privacy was also enshrined in article 7 of the Great Green Document on Human Rights.

20. With regard to question IV (g), article 1 of Act No. 76 of 1972 dealt with the freedom of the press and the mass media; it proclaimed that each person had a right to express his opinion and to disseminate it by all means compatible with the law and accepted social values. Article 2 stipulated that there should be no censorship of the press before publication. Article 28 stated that all foreign reviews were to be scrutinized before distribution to ensure that they contained no attack on national unity, national feeling, religious beliefs, the Revolution or national security.

21. With regard to question IV (h), article 13 of the Constitutional Declaration guaranteed freedom of opinion within the limits of public interest and the principles of the Revolution. Article 8 of the Promotion of Freedom Act also guaranteed freedom of expression. However, publication of any opinion incompatible with the interests of society was prohibited.

22. In relation to question IV (i), Libyan legislation prohibited any propaganda for war and any advocacy of national, racial or religious hatred. Article 16 of the Great Green Document proclaimed Jamahiri society as a society of the good and of noble values, holding human ideals and principles sacred, condemning aggression, war, exploitation and terrorism, and making no distinction between the powerful and the powerless. It further stated that all peoples had the right to live freely, according to their choice and the principles of self-determination; that they were entitled to establish their national identity; the minorities had the right to safeguard their own entity and heritage; and that the legitimate aspirations of those minorities could not be repressed.

23. Concerning question IV (j), the holding of public meetings was regulated by an Act of 30 October 1965. Article 1 stated that citizens of the Jamahiriya had the right of peaceful private and public assembly without the presence of the police or the need for prior approval of the authorities, subject to compliance with the law. Article 2 stipulated that any person wishing to call a public meeting was obliged to inform the local authorities 48 hours in advance. Article 4 stated that the authorities were not entitled to ban any meeting unless it was likely to create a disturbance or pose a threat to security. The organizers of a meeting were to be informed without delay of any such ban and were entitled to appeal against it to the Ministry of the Interior. No ban could be placed on electoral meetings.

24. With regard to question IV (k), article 1 of the Associations Act, No. 111 of 1970 stated that associations had to comply with the law. Non-profit-making associations were entitled to meet freely. The Act regulated the administration and procedures of such association and provided for official supervision of their activities. Its article 9 enshrined the right of citizens to create professional associations and hold meetings for the purpose of defending the rights of their members. The interests of trade unions were protected by the Labour Act, No. 8 of 1970, and the Trade Unions Act, No. 107 of 1975. Workers in the same occupation or in similar occupations were entitled to hold meetings and to form organizations with a view to increasing productivity, improving their education, defending their interests and advancing their social, material and cultural interests. Support for the international trade union movement was also promoted.

25. Turning to question IV (l), he explained that all Libyan citizens were of Arab ethnic origin, spoke the same language - Arabic - and practised the religion of Islam. Sects did not exist in the country, and there was no discrimination on grounds of race or colour. All citizens were equal before the law and social harmony reigned.

26. Mr. EL ZAHRAH (Libyan Arab Jamahiriya) said he wished to provide supplementary information on the draft Constitution now being considered by the General People's Congress. The draft stipulated that the judiciary was independent and that members were accountable only to their own conscience and to the law in adopting their decisions. The functions of judges or magistrates were to apply the law in such a way as to protect society and the interests and freedoms of the individual. The right to bring cases before the judicial institutions was guaranteed for all citizens. The draft Constitution provided that no administrative measure could be adopted without a judge's authorization and prohibited the establishment of ad hoc courts. Military courts had jurisdiction solely over members of the armed forces.

27. On the subject of non-discrimination and equality between the sexes, the draft Constitution stated that citizens were free and equal in their rights and duties and that their fundamental freedoms could in no way be impaired. Each citizen was entitled to freedom of thought and public expression as long as there was no recourse to force, violence, terrorism or sabotage. Citizens were held to be equal before the law, with no discrimination on grounds of sex, origin, language, religion, conviction or opinion. Freedom of religious belief was guaranteed to all, and the use of religion to stir up sedition,

fanaticism, sectarianism, factionalism and conflict was prohibited. The draft Constitution guaranteed the free exercise of religious rites and traditions provided that they did not jeopardize public order.

28. Regarding the social position of women, he noted that divorce had previously been the sole prerogative of men, to be exercised with no restriction whatsoever. That prerogative had been accorded to men on the basis of their superior strength and the biological differences between them and women. In the past, under the Shariah, the Islamic religious authorities had been able to adopt a decision obliging a woman who had left her husband to return to him, even if coexistence between the spouses had become impossible. The husband had also had the option of requesting a finding of wifely disobedience, under which his wife would be "suspended", i.e., neither divorced nor married, for the rest of her life. In the event of separation and exercise by the husband of the right to divorce, ownership of the family home reverted to him alone.

29. All those measures were things of the past. The right to divorce now no longer pertained exclusively to the husband. Women, too, could request a divorce, and the provisions on wifely disobedience had been abrogated. If a divorce was requested by mutual consent, the wife kept the family home, retained custody of the children and had the right to receive alimony payments.

30. Polygamy had been an absolute prerogative of the husband in the past, but under the new legislation on personal status, the husband could not marry a new wife without written authorization from his first wife, and without adducing serious grounds for the measure, such as illness or sterility or the impossibility of carrying on a normal married life. Should a husband violate the new legislation, his second marriage would be declared null and void and a judge would order compensation to be paid to the first wife.

31. Concerning interference by the authorities in the private lives of citizens, the draft Constitution stated that the confidentiality of correspondence and communications was guaranteed for all citizens, save in exceptional cases determined by the judiciary. The family home was sacred and inviolable, except in cases where it was used to conceal a crime, to shelter a criminal or to jeopardize the physical or moral well-being of individuals. Body searches were prohibited, except with the permission of the judicial authorities and in accordance with the law. All citizens were free to engage in personal relationships and private behaviour as they wished; that freedom could not be curtailed except where it posed a threat to society or to religious or moral values. The draft Constitution provided that every citizen had freedom of thought and public expression as long as there was no recourse to force, violence, terrorism or sabotage.

32. On the employment of minors, the draft Constitution prohibited the employment of children in occupations that might limit their natural growth, damage their morals or health or hinder their education.

33. Mr. EL SHAFEI thanked the Libyan delegation for its replies to the questions in sections III and IV of the list of issues. Referring to article 14 of the Covenant, he asked whether the proceedings in the

revolutionary courts followed the rules laid down in the Code of Criminal Procedure, and whether their decisions were open to appeal. Concerning political prisoners, he would like to know the average duration of their detention before trial and whether any such detainees were still awaiting trial. Were the revolutionary or people's committees entitled to act as judicial authorities, and if so, under what law?

34. Turning to article 19 of the Covenant, he asked what legal guarantees existed for freedom of expression in various media, including the spoken word and images, and what was the definition of information that could not be disseminated. Could opinions contrary to those of the Government be expressed in the press, and what resources were available for that purpose? Was there any intention to amend the law of 1971 prohibiting the formation of professional associations or unions?

35. He was grateful for the information provided on the draft Constitution and would like to know whether that draft when adopted, would supersede the Constitutional Declaration. Would it abrogate all prior legislation that went against its own provisions?

36. Finally, he would like to know whether the embargo imposed on the Libyan Arab Jamahiriya affected the exercise of any of the rights set out in the Covenant.

37. Mrs. EVATT said she welcomed the news that no death penalty had ever been imposed on grounds of heresy but would suggest that the relevant provision should be removed from the Code of Criminal Procedure, for it breached articles 6 and 18 of the Covenant. Its continued existence pointed to the conflict between a desire to respect Islamic principles and the need to conform to the Covenant's provisions.

38. No response had been given to her earlier question on the 16 individuals reported by Amnesty International to have been in detention since the rebellion in October 1993. She would like to know what charges had been brought against them, whether they had been tried and whether they were being held incommunicado.

39. In connection with article 14 of the Covenant, she requested further information about the structure of the courts. What was the distribution of jurisdiction between the regular courts and the people's courts, military courts and revolutionary courts? Which were the courts that had criminal jurisdiction and how was it decided which court a particular case would be assigned to? Did all the courts sit openly, or did some have the right to hold secret sessions - and if so, in what cases? Information had been provided by the Libyan delegation on the legal profession, but other sources suggested that private legal practice was not permitted - was that so? If all lawyers were employed by the Government, that might undermine the independence of the legal profession. Was a lawyer assigned to every defendant, including those charged with criticism of the Government? Was a lawyer available to a defendant during the entire period of interrogation and investigation?

40. The information provided on the equality of women showed that the Libyan Arab Jamahiriya had made progress in that area. Yet the country had entered

significant reservations when ratifying the Convention on the Elimination of All Forms of Discrimination against Women, which suggested that there remained areas where, either in law or in practice, women did not yet have full equality with men. Was that true - in respect of inheritance rights or the right to give evidence in court, for example?

41. In some cases the Libyan delegation had given abundant information, but it was not quite precise enough to enable the Committee to determine whether the law was in full compliance with the Covenant. She referred to article 20 of the Promotion of Freedom Act, which permitted a court to issue injunctions banning departure from the country, as a case in point. Article 12 of the Covenant provided that any limitations on the right of freedom of movement must be made by law and for the reasons set out in paragraph 3 of that article. From the information given, it was impossible to discern the grounds on which a passport might be refused and whether such grounds were in conformity with the Covenant. Referring to article 8 of the Promotion of Freedom Act, she asked how the restrictions on freedom of expression, which were couched in very broad terms, could be reconciled with article 19, (3) of the Covenant. What specific offences arose from that provision, and was criticism of the Government an offence in itself?

42. She requested further information on the democratic process - how was the executive made answerable to the people's elected representatives, and how in general were executive and legislative functions exercised? Did all citizens have the right to stand for election to public office, or must candidates be approved by a committee? Could opposition candidates put forward their candidacy in elections? Who appointed ministers, and how were they dismissed? Who drafted and introduced legislation?

43. Mr. EL ZAHRAH (Libyan Arab Jamahiriya) suggested that the Libyan delegation should be given the opportunity to respond immediately to the questions raised by each individual speaker, so that the replies might be as detailed as possible.

44. Mr. LALLAH noted that such a procedure had never been used and suggested that the delegation should focus on certain broad themes emerging from the questions.

45. The CHAIRMAN confirmed that the practice used in the past should be followed in the present instance.

46. Mr. EL ZAHRAH (Libyan Arab Jamahiriya) said his suggestion had been intended to promote the best possible dialogue with the Committee, but that if another approach was preferred, his delegation would, of course, go along with it.

47. Mr. LALLAH requested further information on the draft Constitution; what was its exact status, when would it be adopted, and how would it be adopted - through a referendum, for example? Would it set out the separation of powers and ensure the independence of the judiciary? Such measures would go a long way towards guaranteeing the rights covered in sections III and IV of the list of issues.

48. Mr. WENNERGREN noted that the Libyan Arab Jamahiriya, like neighbouring countries, was inhabited by Berbers and Tuaregs, proud and courageous peoples determined to achieve self-determination and to exercise their own cultural traditions. How did the Libyan Government reconcile the interests of the State with the attitude of such peoples?

49. Mr. BAN, after expressing appreciation of the highly professional, relevant and detailed answers given by the Libyan delegation to the written list of issues, said that further elucidation of certain points would be helpful. First, with regard to freedom of association (art. 22), he noted that provision for its enjoyment was made in very simple terms in the Great Green Document and that, on the other hand, a long list of laws regulating individual trade unions and federations was included in paragraph 47 of the report. Was a legislative enactment needed in order for an association to be recognized as legal? Were the trade unions referred to in paragraph 47 State-run? An explanation of how the trade union system worked in Libya would be welcome. His second question related to political parties. The written material supplied did not indicate whether political parties existed in Libya and, if so, whether there were any limitations on membership. For example, could a judge be a member of a political party? Further to the question of the independence of the judiciary, already raised by previous speakers, he asked whether a Libyan judge could at the same time be a member of the executive branch. Lastly, referring to the point raised by Mrs. Evatt concerning the substantial differences between the Covenant and Libyan law on the question of permissible restrictions upon certain rights and freedoms, he asked whether the decision to impose such restrictions was taken by the public authorities and whether there was a system of judicial supervision in that respect. Could an individual citizen ask a court to exercise supervision over a decision of that kind?

50. Mr. POCAR said that he would refrain from listing all his questions in detail, as many of them were similar to those already asked by previous speakers. He would be particularly interested to hear how the new draft Constitution was to deal with rights currently provided for under the Constitutional Declaration and the Promotion of Freedom Act of 1991. The plurality of instruments apparently in force at the same time made it difficult to understand the situation. For example, the right to freedom of opinion (art. 19(1) of the Covenant) was guaranteed "within the limits of public interests and the principles of the Revolution" in article 13 of the Constitution Proclamation. Was that provision still in force or had it been repealed by article 8 of the Promotion of Freedom Act (para. 61 of the report)? If so, were citizens entitled to express and publicly proclaim their ideas and thoughts only in the people's congresses and the information media of the Jamahiriya? Such a restriction on the free expression of opinion would be difficult to reconcile with the spirit of article 19 of the Covenant. He would be grateful for a clarification of the situation with regard to the plurality of norms in general and to the right to freedom of expression in particular.

51. The CHAIRMAN said that he would try to make the Libyan delegation's task easier by grouping the questions by subject and article. A general question had been asked about the relationship between the new draft Constitution on the one hand and the current Constitutional Proclamation and the Great Green

Document on the other. In that connection, one member of the Committee had specifically referred to article 19 of the Covenant, while others had asked whether the new draft would contain any new provisions concerning the question of the separation of powers between the judiciary and the executive. Other questions had related to articles 12, 22, 25 and 27 of the Covenant. One member had asked whether Libya's implementation of the Covenant had been influenced by the United Nations embargo. The Committee would also appreciate some further explanations in connection with section II of the list of issues, and particularly with question (h) relating to pre-trial detention but that information could be provided in writing later.

52. Mr. HAFYANA (Libyan Arab Jamahiriya) said that, before proceeding to answer specific questions, he wished to ask a question of his own. Did the Universal Declaration of Human Rights and the two Covenants recognize the diversity of civilizations, cultures and human experience? Did they celebrate that diversity as a source of enrichment for the entire human race or, on the contrary, did they seek to obliterate it and to reduce all human experience to one common denominator? The answer was no doubt a matter of political choice; those who believed in the infinite diversity of life would answer one way and those who were satisfied with the existing division of the world into North and South, developed and developing, strong and economically dependent, would opt for the other. The information already provided by his delegation illustrated the essential principles underlying the economic and social structure of the Libyan Arab Jamahiriya and the steps being taken to reinforce and safeguard all the rights and freedoms guaranteed by law.

53. With regard to the questions asked in connection with the new draft Constitution, he said that the draft was currently being examined by the people's committees and would come before the General People's Congress in December 1994. Once adopted, the new Constitution would supersede all laws already in existence. However, the draft Constitution did not deal specifically with human rights, which were covered by the Great Green Charter, or with the specific issue of the independence of the judiciary from the executive. The principle set forth in article 28 of the Constitutional Proclamation now in force, namely, that judges were independent and, in the exercise of their functions, free from any authority except that of the law and their conscience, would continue to operate. With regard to the freedom of movement (art. 12 of the Covenant), he said that freedom to travel in the Jamahiriya as well as to leave the country and return to it was guaranteed by Libyan law and, more particularly, by the Great Green Document. Libyan citizens did not require exit permits in order to leave the country. The principles relating to freedom of movement already set forth in the Great Green Document and elsewhere were reproduced in article 25 of the new draft Constitution.

54. His earlier observation about diversity meant that a country's political system did not necessarily have to be liberal. Libyans wanted and enjoyed freedom of conscience and the freedom to implement their own decisions through direct democracy. Any citizen over 18 years of age could become a member of the General People's Congress. If a community felt it necessary to promulgate a law, it could draft the text with the assistance of a technical secretariat and submit it for approval to the General People's Congress. Proposals by Ministries were likewise discussed by the Congress, which could amend or

reject them. Under that system, the people of the Jamahiriya exercised its decision-making powers in all fields of the country's life. Decisions thus adopted were executed by the Ministries or people's committees chosen directly by communities throughout the country. The judiciary was separate from the executive and administrative branches; at the top of the judiciary was the Supreme Court, which heard appeals and took decisions on the constitutionality and applicability of laws. Members of the judiciary enjoyed a protected professional status and were remunerated out of a budget similar to that for officials of the State. Those were the facts about the political system in Libya, and if they were in conflict with the information supplied to the Committee from other sources, he had to say with all respect that some of those sources were prejudiced and not deserving of full confidence.

55. So far as freedom of association (art. 22) was concerned, the existing legislation would, as already stated, be superseded by the coming into force of the new Constitution, whose article 10 reaffirmed the rights of all citizens to form and join trade unions for the protection of their interests. There were no political parties because all authority was vested in the people, which exercised direct power: likewise, there were no class distinctions, no élite, no avant-garde and no economic injustices in Libya. In reply to Mr. Wennegren's question about Berbers and Tuaregs, he said that the claim advanced by a non-governmental organization to the effect that 97 per cent of Libya's population consisted of Berbers was a historical untruth. In any case, the precise identity of Berbers and their ethnological, social and cultural characteristics were very much a moot point. Scholars from many countries, including France and Germany, had written extensively on the subject, generally coming to the conclusion that it was not possible to speak of a single Berber race. Many Libyan names, including his own, testified to the fact that Libya was inhabited by a mixture of Arab tribes forming a single Islamic Arab society. The Tuaregs, too, formed an integral part of that society, and the Jamahiriya had never had any problem whatsoever with the Tuaregs in its midst. The indication in paragraph 56 of the report to the effect that there were no ethnic minorities in Libya was a statement of fact as well as a reflection of his country's determination to avoid "Balkanization". Libya fully respected the rights of minorities, but it had none of its own.

56. The truth of the matter, regardless of the disinformation which emanated from certain sources, was that Libya was an Islamic Arab society without minorities, although it vigorously defended the rights of minorities where they existed. The concentration by certain observers on minorities was part of a regrettable tendency to "Balkanize" the developing world and the Arab world in particular by exaggerating divisions.

57. Turning to the question of ministerial appointments, he said that it was not true, as had been claimed, that such appointments were based on personal friendships with the head of State rather than on objective criteria. Ministers were members of the peoples' committees and chosen directly by the masses through their congresses, not by the head of State.

58. Another question had concerned the issuing of passports to women wishing to accompany their husbands travelling abroad. There were no restrictions on women's rights to travel abroad with their husbands and children, in keeping with the State's endeavours to improve the rights and status of women.

59. With regard to the question concerning free elections, he drew the Committee's attention to the fact that proposals for amending the relevant constitutional provisions were due to be submitted to the people's congresses.

60. Mr. EL ZAHRAH (Libyan Arab Jamahiriya) said, firstly, that he wished to correct a serious misunderstanding on the part of one of the Committee's members concerning his own status: as President of the Court of Appeal and member of a people's committee, he was a judge rather than a member of the executive; he was responsible for helping to draft legislation on the basis of decisions taken by the people's congresses. With regard to the types of court in Libya and their different jurisdictions, he noted that, according to the relevant provisions, courts were organized at various levels and courts specialized in civil, commercial or criminal matters. Appeals could be lodged with courts of appeal against rulings handed down by courts of first instance. The Supreme Court and the Court of Cassation were the courts of highest instance, with the power to review, and if need be set aside, verdicts given in lower courts. The people's courts were competent to deal with certain areas pertaining to individuals' rights and freedoms of a general nature; the rulings of those courts, too, could be appealed against to higher courts, including the Supreme Court. He noted that court hearings were held in public, although courts could decide to conduct hearings in camera if that was deemed necessary to preserve public order.

61. A question had been raised concerning the punishment for apostasy. The penalty was determined not by legislation, but by Islamic law. The death penalty had not actually been applied for apostasy in Libya, since most apostates repented and returned to Islam. Similarly, for want of sufficient proof, legislation which provided for the amputation of thieves' hands had not actually been applied since its enactment.

62. As for the question concerning freedom of association, he endorsed what Mr. Hafyana had said, and wished to add only that members of the judiciary were prevented from belonging to political organizations or professional associations or from expressing political opinions in the interests of upholding the separation of powers which had been clearly demonstrated in the second periodic report.

63. Mr. HAFYANA (Libyan Arab Jamahiriya) replying to the question raised by Mr. El Shafei concerning the effects of the United Nations embargo, confirmed that the action had created serious difficulties for Libya in applying the Covenant. Indeed, in severely restricting the freedom of Libyan citizens, including his own delegation, to travel to and from their country, and the ability of the State to protect public health, the embargo had violated article 12 of the Covenant.

64. The CHAIRMAN thanked the Libyan delegation for its replies and invited members of the Committee to make their concluding observations.

65. Mr. EL SHAFEI said that the Libyan delegation had submitted very useful and detailed information in its written replies and in its oral replies to the Committee's additional questions. The dialogue which had taken place had shed much light on the experience of the Libyan Government in attempting to create a democratic system.

66. Clearly, it was not the Committee's prerogative to prescribe the economic, social and political systems adopted by States parties. Nevertheless, the Libyan Arab Jamahiriya was obliged under the terms of article 2 (2), of the Covenant to bring its domestic legislation into line with that instrument, and he hoped that further progress would be made in doing so.

67. Mr. WENNERGREN said that the Libyan delegation had provided a great deal of very interesting information and through its efforts had taught the Committee much about the particular circumstances in the Jamahiriya.

68. He noted that the internal organization of the Libyan State was unlike that in most other countries, and the sheer complexity of that organization made it very difficult for the Committee to obtain a clear overview of the situation. In particular, it was very difficult to see how in the Libyan system the separation of the executive, legislative and judicial powers was actually achieved.

69. In other areas, too, he could not avoid feeling grave concerns concerning the implementation of the human rights guaranteed under the Covenant. The wide availability of the death penalty for many types of crime was not consistent with the right to life guaranteed by the Covenant. The availability of amputation and corporal punishment, even if those sanctions were rarely applied, was contrary to article 7, as were the widespread use of incommunicado detention and the generally inhumane treatment of prisoners. The different types of detention, and the apparently arbitrary pretexts used by the authorities to justify detentions, violated the fundamental right to liberty and security of person. In the area of freedom of expression, of assembly and of association, the authorities appeared to exercise more or less total control.

70. The basic concepts of human rights were obviously not alien to the Libyan authorities. He hoped that the delegation would draw its Government's attention to the Committee's grave concerns with a view to making fundamental respect for human rights in Libya a reality.

71. Mrs. EVATT expressed appreciation of the willingness of the Libyan delegation to provide the Committee with detailed information. Libya clearly faced considerable difficulties in applying the Covenant, and the advances which had been made, for example, in women's rights or in the attempt to incorporate certain basic rights and freedoms into the law, were in themselves encouraging.

72. Nevertheless, in the light of the numerous reports of human rights violations which had come to the Committee's attention, no one could reasonably harbour any illusions about the degree to which Libyan citizens in reality enjoyed the basic rights guaranteed under the Covenant, many articles of which appeared to be routinely violated. Many questions had yet to be answered, especially those concerning internal power structures, and much remained to be done to improve the country's human rights record. It was to be hoped that further dialogue would pave the way for improvements in the future.

73. Mr. BAN said that the dialogue with the Libyan delegation had been of good quality and the information provided by the delegation had been helpful

to the Committee, which would incorporate it into its final comments. He hoped that the delegation would see those comments as a sign of the Committee's willingness to give every possible assistance to the country in implementing the Covenant.

74. Mr. FRANCIS thanked the Libyan delegation for the competent way in which it had handled the Committee's questions and for the evident seriousness with which it regarded human rights.

75. Overall, the report submitted by the Libyan Arab Jamahiriya had given a clear view of the measures which had been taken to apply the Covenant. Certain developments - such as the attempt to create representative institutions, improvements in the status of women, and moves to improve the legal protection enjoyed by children - could be regarded as encouraging and gave the Committee reason to hope that further progress would been seen in future.

76. Mr. LALLAH thanked the delegation for its answers, and emphasized that his questions and comments had been motivated by his desire to supervise the effective implementation of the Covenant.

77. Mr. POCAR agreed that the delegation had contributed much to the Committee's understanding of the situation in the Jamahiriya and hoped that the delegation would convey the Committee's concerns to the competent authorities.

78. Mr. BRUNI CELLI said that the Libyan delegation had made an excellent effort to explain to the Committee the somewhat complex social and political circumstances in which Libya was trying to apply the Covenant. The Committee had learned much from the dialogue, and hoped that the delegation had in return acquired a clear view of the Committee's concerns which, as representative of the international community, it was obliged to express. He urged the delegation to pass on those concerns to the competent authorities.

79. Mr. HAFYANA (Libyan Arab Jamahiriya) thanked the members of the Committee for their patience during the discussions, which had been of great benefit to his delegation.

80. He assured the Committee of the continuing commitment of the Libyan authorities to protecting the rights and freedoms guaranteed under the Covenant. The Committee's comments would be conveyed to the Government and given serious and positive consideration.

81. The CHAIRMAN, in conclusion, thanked the delegation of the Libyan Arab Jamahiriya and said that the Committee, in accordance with its usual practice, would forward its detailed written comments in due course and notify the Libyan Government of the due date for its third periodic report.

The meeting rose at 6.10 p.m.